

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
Case No. 1:06CV26-T

FILED
ASHEVILLE, N. C.

MAR - 3 2006

H&R BLOCK TAX SERVICES, INC.,)
)
Plaintiff,)
)
v.)
)
DAVID SOWDEN and)
MARILYN SOWDEN,)
)
Defendants.)

U.S. DISTRICT COURT
W. DIST. OF N. C.

FINAL JUDGMENT ON CONSENT

Upon the consent and agreement of plaintiff H&R Block Tax Services, Inc. ("H&R Block") and defendants David Sowden and Marilyn Sowden ("the Sowdens"), final judgment including permanent relief is entered as follows:

1. H&R Block grants franchises for the operation of tax preparation and related services throughout the United States.
2. H&R Block, through a predecessor company, and defendant David Sowden entered into two Franchise Agreements, both dated December 1, 1995 for a H&R Block franchise business in Forest City and in Spindale, North Carolina, respectively.
3. After December 1, 1995, defendant David Sowden operated a H&R Block tax preparation franchise business in Forest City, North Carolina and in Spindale, North Carolina under the terms and conditions of those Agreements.
4. Because David Sowden on or about July 26, 2005 notified H&R Block that he was not renewing the Agreements, the Franchise Agreements expired on November 30, 2005.

5. The Franchise Agreements prohibited David Sowden from competing in the tax preparation business, soliciting H&R Block's clients and disclosing information as described in paragraph 12 therein after they terminated and further required David Sowden to return to H&R Block certain information, including H&R Block's client information.

6. The non-compete covenant in the Agreements provide in paragraph 12(a)(ii) as follows:

[F]or a period of one year after the termination of this Agreement or the Transfer or other disposition of this franchise, he will not directly or indirectly, whether as an owner, stockholder, partner, officer, director or employee, solicit by mail, phone or in person, or divert from Block or Block franchisees any person for whom Franchisee prepared a tax return or performed Related Services or Additional Services at any time during the term of this Agreement for the purpose of rendering of services in connection with the preparation of tax returns or performance of Related Services or Additional Services . . .

7. Marilyn Sowden is the wife of David Sowden and worked for him as a tax preparer at his H&R Block franchise business in Forest City and in Spindale, North Carolina.

8. After the Franchise Agreements terminated on December 1, 2005, Marilyn Sowden established and engaged in the tax preparation business under the name Advocate Tax Preparation in Forest City and Spindale, North Carolina.

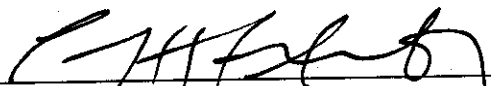
9. Upon the consent of the parties, IT IS HEREBY ORDERED that:

a. Defendant David Sowden and Marilyn Sowden are prohibited from directly or indirectly, whether as an owner, stockholder, partner, officer, director or employee, engaging in the business of preparing or filing tax returns in or within forty-five (45) miles of Forest City, North Carolina and Spindale, North Carolina until on or after January 1, 2007.

b. In the event that any part of this Consented Judgment is violated by David Sowden and/or Marilyn Sowden, H&R Block may, by motion with notice to

the attorney for the Sowdens, apply for sanctions and such other relief as may be appropriate.

c. The issue of damages in this case has been separately settled by the parties. The balance of the complaint for damages as to David Sowden and Marilyn Sowden is dismissed, with prejudice, each party to bear its own costs and attorneys' fees.


Lacy H. Thornburg, Date: 3-3-06
United States District Judge

AGREED TO IN FORM AND SUBSTANCE:

H&R BLOCK TAX SERVICES, INC.

By: 

Daniel G. Cahill NC #20887
POYNER & SPRUILL, LLP
3600 Glenwood Avenue
Raleigh, NC 27612
(919) 783-6400
(919) 783-1075 (Fax)
dcahill@poynerspruill.com

DAVID SOWDEN
MARILYN SOWDEN

By: 

James Gary Rowe NC #3794
KELLY & ROWE, P.A.
P.O. Box 2865
Asheville, NC 28802
(828) 251-9310
(828) 251-9320 (Fax)
JGRoweKellyRowe@bellsouth.net